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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961.

No. 745

ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN, etc., et al.,

Petitioners,

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY,

Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

BRIEF FOR RESPONDENT IN OPPOSITION

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit, as reported in 296 F. 2d 453.

The Findings of Fact, Conclusions of Law, and Injunction Order of the District Court, appearing in the Appendix in the Court of Appeals and filed by Petitioners herein are not officially reported.

JURISDICTION

The judicial requisites are adequately set forth in the Petition.

QUESTION PRESENTED

Should this Court grant certiorari to review the concurrent findings of fact made by the District Court and the Court of Appeals that the dispute over which a strike was threatened is a "minor dispute", one subject to compulsory arbitration procedures under the Railway Labor Act and to binding decision by the National Railroad Adjustment Board?

STATUTE INVOLVED

The statutory provisions involved are Sections 2, 3 and 6 of the Railway Labor Act (45 U.S.C. §§ 152, 153 and 156) and set forth on pages 23 and 24 in the Petition.

STATEMENT

On August 15, 1959, the Petitioners, Order of Railway Conductors and Brakemen, *et al.*, gave formal notice to Respondent of a proposed addition to the collective bargaining agreement then in effect between the parties. The intended change, submitted pursuant to Section 6 of the Railway Labor Act, *was to add the following provision* to the agreement: (Italics added)

> "Upon request of the Local Committee of Adjustment of the Order of Railway Conductors and Brakemen, conductors may be required to register miles made as a conductor during any pay period. It will not be the duty of conductors, either part time or regular, to register miles made working as a conductor with other than the Organization duly authorized in accordance with the terms of the Railway Labor Act to represent the Conductors craft and class."

In the background was a mileage agreement between the Respondent Railroad and another union which represented brakemen. The mileage agreement placed a limita-

tion of 4,000 miles a month on employee earnings. It required registration of all miles worked. As to employees holding seniority as conductor and brakeman and required to accept a call to work as conductor, the agreement, in practice, had the effect of applying miles worked as a conductor to reduce the number of miles such an employee could thereafter work as a brakeman.

After a conference between the parties, the Respondent on September 14, 1959, advised Conductors that it did "not agree there is a basis for a rule such as requested by you and it is, therefore, declined". Conductors did not withdraw the proposal and the parties continued to confer and negotiate concerning the offer contained in the Section 6. Notice dated August 15, 1959.

At a meeting of the representatives of the parties on November 18, 1960, the proposal made by the Conductors was accepted by the carrier.

On November 27, 1960, the Conductors called a strike to begin on December 4, 1960, without submitting the dispute as to the interpretation of the agreement to the National Railroad Adjustment Board.

On December 12, 1960, the carrier filed an *Ex Parte* Submission, as provided for by the Railway Labor Act, to the National Railroad Adjustment Board, First Division, where it and the Conductors' Submission is now pending.

Injunctive relief was sought and granted by the District Court and affirmed by the United States Court of Appeals for the Seventh Circuit.

REASONS FOR DENYING THE WRIT.

Petitioners are merely asking this Court to review facts. We respectfully suggest that this Petition falls within the purview of the language in the case of *Gracey Mfg. Co.* v. *Linde Co.*, 336 U.S. 271, p. 275, which indicates that this Court should not undertake to review concurrent findings of fact by two courts below in the absence of very obvious and exceptional showing of error.

Petitioners suggest that the Court of Appeals for the Seventh Circuit misunderstood the nature of collective bargaining and interprets the Railway Labor Act in such a manner as to create doubt and confusion. The theme of their argument is best summed up by the following words used in the Petition:

> "The court opinion *implies*"
> (Italics added) (p. 8 of Petition)
>
> "Specifically the opinion *appears* to hold"
> (Italics added) (p. 9 of Petition)

The Court of Appeals for the Seventh Circuit held on page 5 of their opinion that the threatened strike was one over a dispute as to the interpretation or application of the agreement. (p. 19 of Petition)

The District Court in its Conclusions of Law and Injunction Order (Petitioners' Appendix 97-100) found that the proposal for a rule change was accepted and the dispute between the parties concerned the interpretation of the existing contract.

The Court of Appeals for the Seventh Circuit in their opinion implied nothing but specifically held this to be a "minor dispute" and followed this Court's holding in the case of *Brotherhood of Railroad Trainmen* v. *Chicago River & Ind. R. R. Co.*, 353 U.S. 30.

The issue in this case is one of fact. Was a contract entered into by the parties? It is basic in contract law that whether a contract has been entered into is a fact question. Both courts below considered the facts and both found a contract did exist.

Petitioners suggest a conflict in the decision of the Court of Appeals for the Seventh Circuit in this case and that in the cases of *Butte, Anaconda & P. Ry. Co. v. Brotherhood of L. F. & E.*, 9 Cir., 268 F. 2d 54, 59; *Norfolk & W. R. R. Co. v. Brotherhood of Ry. Train.*, 4 Cir., 248 F. 2d 34, 43, 45, 46; *Railroad Telegraphers v. Chicago & N. W. R. Co.*, 362 U. S. 330, 341.

In each of the aforesaid cases proposals were submitted pursuant to Section 6 of the Railway Labor Act, but never were they accepted by the parties to whom they were made.

In the instant case the two lower courts have specifically found the existence of a contract, the interpretation of which is in dispute. Therefore, the cases cited by Petitioners are not governing and it is clear that there is no conflict between this case and the decisions of other circuits.

Petitioners make a generalization that a Section 6 Notice is not an offer but part of the statutory procedure to bring parties together to enter into new or additional agreements. Petitioners, however, ignore the Notice which they served on the carrier in this case. This Notice was more than a device to begin collective bargaining. The Petitioners in this Notice did more than try their hand at some language, they told the Respondent exactly what they sought.

Who should know better than the parties asking for something what they want. This has been the beginning of every contract negotiation.

Petitioners are attempting to make "collective bargaining" a strange and mysterious thing, while actually it means nothing more than contract negotiations. Congress realized this when it enacted the Railway Labor Act and formulated a procedure to bring order to contract negotiations in an industry of such importance as the railroad industry. Importance from the standpoint of the public! The interpretation which the Petitioners seek to put on the findings of the lower courts will bring chaos to the procedure of the Railway Labor Act.

The dispute in its basic facts is simple. The petitioners wanted something—they got it. They did not like what they asked for after it was given them and now are seeking to upset it. What procedure should be followed if this is the end they seek? A new Section 6 Notice should be filed and then the procedure covering contract negotiations in the railroad industry should be followed.

In any contract there are terms that cause misunderstanding between the parties and the interpretation of these terms has been the basis of many lawsuits before the courts over the years. Congress when it enacted the Railway Labor Act and established the National Railroad Adjustment Board took the interpretation of contracts, whose terms were peculiar to the industry, and placed it in a tribunal having unequivocal jurisdiction to finally and completely decide the issues. The injunctive processes of the federal courts, as upheld by this Honorable Court, have time and again enforced the jurisdiction of this administrative body.

CONCLUSION

It is respectfully suggested to this Honorable Court that certiorari should be denied because the Petitioners are merely asking this Court to review a concurrent finding of fact made by the two courts below without a showing of error and without a showing of conflict among the decisions of the lower courts.

Respectfully submitted,

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